

REMARKS

The Non-final Office Action of April 9, 2003 has been fully considered. In view of the above amendments and following comments, reconsideration of the application is respectfully requested.

STATUS OF THE CLAIMS

Claims 1-7, 9, 11-15, and 17-26 are pending in the application

Claims 1 and 7 have been amended.

Claims 8, 10, and 16 are cancelled herein.

THE OFFICE ACTION

Claims 1-6, 10-15, and 17-26 are rejected under 35 U.S.C. § 102(b) as being anticipated by Japanese Patent translation JP4048927, hereinafter Kobayashi.

Claims 1-6, 10-13, 15, 19-20, and 22-23 are rejected under 35 U.S.C. § 102(b) as being anticipated by Biotteau, U.S. Patent No. 4,337,292.

Claim 7 does not stand rejected on art and is understood to be allowable.

Claims 8-9 and 16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kobayashi or Biotteau, each in view of Auerbach (U.S. Patent No. 3,916,969) and Bartley (U.S. Patent No. 4,201,261).

The Present Application

The present application is directed to a construction material for use as, or in, a wearing course. The material includes an agglomerate of granules of a thermoplastic elastomer, specifically a styrene block copolymer (claim 1). The nature of the thermoplastic elastomer is disclosed at page 3, line 26 to page 4, line 17. Thermoplastic elastomers do not require crosslinking to achieve elastomeric properties. Rather, elastomeric properties may be diminished by

crosslinking. The nature of this thermoplasticity is referred to in the specification at page 4, lines 7-17.

The References do not
Anticipate the Claims

With reference to Kobayashi, the reference discloses preparation of an elastic playing surface, for example a tennis court, comprising:

(a) applying to a base a coarse, granular rubber layer having cavities in the inner part;

(b) then applying a fine granular rubber layer; and

(c) then applying a facing layer.

Kobayashi suggests that the layer (a) be, for example, pulverized waste tire, natural rubber, or styrene butadiene rubber. Kobayashi also teaches that the fine material of (b) can be the same as that of (a). The facing layer of (c) is described, for example, as a polyurethane or styrene-butadiene rubber. The use of the term "rubber" clearly indicates a vulcanized material and **not a thermoplastic elastomer**. Kobayashi does disclose the possible use of polyurethane rubber in an unvulcanized state. Kobayashi does not disclose or fairly suggest that the "polyurethane rubber" referred to is a thermoplastic elastomer or, indeed, suggest the use of thermoplastic elastomers in general. Additionally, Kobayashi discloses the use of polyurethane, not styrene block copolymers. In light of the above discussion, Kobayashi provides no motivation to use thermoplastic elastomers comprising a styrene block copolymer. Applicants respectfully submit that the present application is not anticipated by Kobayashi.

With reference to the Biotteau patent, this reference teaches sheet material for use on playing surfaces. No disclosure can be seen in Biotteau of any thermoplastic elastomer. None of the powdered solid materials referred to at column 2, lines 7-15 are

thermoplastic elastomers. Further, the polymeric material referred to therein as "EPDM" is the polymer used in the comparative examples of the present application, whose use is adversely compared with the use of thermoplastic elastomers. Moreover, the polyurethane disclosed in Biotteau is not disclosed as a thermoplastic elastomer. Biotteau does not disclose the use of styrene block copolymer thermoplastic elastomers for use on playing surfaces. In light of the above discussion, Biotteau provides no motivation to use thermoplastic elastomers comprising a styrene block copolymer. Applicants respectfully submit that the present application is not anticipated by Biotteau.

Auerbach and Bartley do not
Render the Claims Obvious

With reference to the Auerbach patent, this patent teaches the use of an SBS polymer in the form of "films" for use (column 4, lines 51 to 53) as a lubricant between the carcass ply and nearest belt ply for causing slippage between the two plies to facilitate a change in the cord angles of the belt cords. There is no teaching or motivation in Auerbach that would lead one of ordinary skill in the art to use an SBS block copolymer as a wearing course for a sports surface. The fair teachings of Auerbach would, in fact, lead one of ordinary skill away from the use of an SBS block copolymer because one of the normal attributes of a polymer sports surface is that it should provide good frictional properties. This is inconsistent with Auerbach's use of an SBS block copolymer as a lubricant to promote slippage. In light of the above discussion, it is respectfully submitted that Auerbach does not render it obvious to use its lubricating SBS block copolymer as a substrate for the granular wearing course material of either of Kobayashi or Biotteau.

With reference to Bartley, the reference is related to pneumatic tires which, except for bead cores, are comprised solely of an elastomeric blend of polymers. The polymers disclosed at column 2, lines 35-55 include a blend of a polyolefin and EPM or a polyolefin and EPDM. Bartley makes no reference to styrene block polymers and would not lead one of skill in the art to select styrene block copolymers for use in a wearing course. Moreover, the use of EPDM - as already suggested in Bartley - in sports surfaces is adversely compared with the use of thermoplastic elastomers in the Examples of the present application.

In light of the above discussion, Applicants respectfully submit the present application is not obvious over either of Kobayashi or Biotteau in view of Auerbach and Bartley.

The Claims Distinguish
Patentably Over the References

Claim 1 of the present invention is directed to a construction material for use as, or in, a wearing course. The material includes a thermoplastic elastomer comprising styrene block copolymers. The references of record fail to suggest the use of styrene block copolymer thermoplastic elastomers, instead suggesting various other particulate materials. Moreover, the teachings of the references would, as discussed above, lead one of ordinary skill away from their use in the present application. Accordingly, Applicants submit that claims 1-6, 9, 11-15, and 17-26 differ patentably over the references of record.

Claim 7, which was not rejected on art, has been placed in amendment form. Because there is no outstanding registration, it is submitted claim 7 is now in condition for allowance.

Formal Drawings

The Applicants again request acknowledgement that the formal drawings have been accepted.

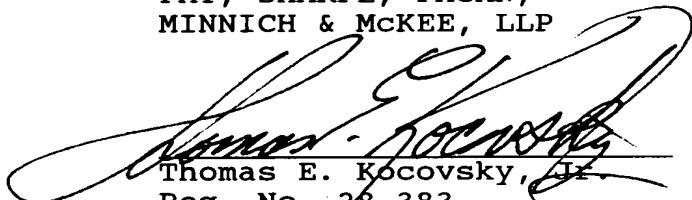
Conclusion

In view of the above, Applicants submit that claims 1-7, 9, 11-15, and 17-26 are in condition for allowance. An early allowance of all claims is respectfully requested.

If any fee is due in conjunction with the filing of this response, Applicants authorize deduction of that fee from Deposit Account No. 06-0308.

Respectfully submitted,

FAY, SHARPE, FAGAN,
MINNICH & MCKEE, LLP



Thomas E. Kocovsky, Jr.
Reg. No. 28,383
1100 Superior Avenue
Seventh Floor
Cleveland, OH 44114-2518
(216) 861-5582

CERTIFICATE OF MAILING

I hereby certify that this **AMENDMENT B** in connection with U.S. Patent Application Serial No. 09/485,034 is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Non-Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 16 day of August, 2003.

By: 
Audrey M. Dragony